

REMARKS

Claims 1-113 are pending in the present application. Claims 54-58 and 109-113 have been withdrawn from consideration.

The Examiner alleges that the presently pending claims of Group I are directed to four distinct species, Specie 1 as illustrated in Figures 13 and 14; Specie 2 as illustrated by Figures 11 and 15; Specie 3 as illustrated by Figure 16; and Specie 4 as illustrated by Figure 12. These assertions by the Examiner are respectfully traversed for the following reasons.

Initially, the Examiner has failed to provide a *prima facie* case that the presently pending claims are directed to distinct subcombinations relating to a combination. The only reason that the Examiner gives for support of the Restriction Requirement between Group I and Group II is that Group I has separate utility for controlling sensitivity for a digital imager. The Examiner has failed to demonstrate that the subcombinations can be separately usable. A mere allegation of one subcombination having separate utility does not meet the burden of showing that the subcombinations can be separately usable. Thus, the Examiner has failed to provide a *prima facie* case that the presently pending claims are directed to distinct subcombinations.

Notwithstanding, the Examiner's failure to provide a *prima facie* case that the presently pending claims are directed to distinct subcombinations, the Applicant, to expedite the prosecution of the present application, elects, with traverse, the claims drawn to Group I.

The Examiner has further subjected the claims of Group I to an election of species requirement, alleging that these claims are drawn to four distinct species, Specie 1 as illustrated in Figures 13 and 14; Specie 2 as illustrated by Figures 11 and 15; Specie 3 as illustrated by Figure 16; and Specie 4 as illustrated by Figure 12. With respect to this election of species requirement, the Examiner has failed to provide a *prima facie* case that the four distinct species (Specie 1 as illustrated in Figures 13 and 14; Specie 2 as illustrated by Figures 11 and 15; Specie 3 as illustrated by Figure 16; and Specie 4 as illustrated by Figure 12) are patentably distinct.

Notwithstanding, the Examiner's failure to provide a *prima facie* case that the four distinct species (Specie 1 as illustrated in Figures 13 and 14; Specie 2 as illustrated by Figures 11 and 15; Specie 3 as illustrated by Figure 16; and Specie 4 as illustrated by Figure 12) are patentably distinct, the Applicant, to expedite the prosecution of the present application, elects,

with traverse, Specie 2. The Applicant respectfully submits that claims 1-53 and 59-108 read upon the alleged Specie 2 as illustrated by Figures 11 and 15.

In summary, the Applicant elects, with traverse, claims 1-53 and 59-108, drawn to Group I and which read upon the alleged Specie 2 as illustrated by Figures 11 and 15 of the originally filed specification.

RELIEF FROM FURTHER ELECTION OF SPECIES REQUIREMENTS

The Applicant respectfully requests that the Examiner refrain from issuing any further restriction or election of species requirements and to immediately examine or allow the above-identified application.

To date, the Examiner has issued two Election of Species Requirements. Moreover, as is clear from the record, the Examiner has failed to establish a *prima facie* case to support the Election of Species Requirements.

It is noted that the Office Action, dated November 14, 2008, has caused the Applicant to accrue unnecessary costs to address a second Election of Species Requirement wherein the Examiner has failed to justify such a new Election of Species Requirement.

In addition to the accrual of these unnecessary costs, the Examiner has unjustly delayed the prosecution of this application.

It is the Applicant's position that the Applicant should not have to accrue any further unnecessary costs in addressing further attempts to subject the claims unjustifiable Election of Species Requirements because the subjection of the currently pending claims to another Election of Species Requirement would be arbitrary and capricious.

Therefore, it is the Applicant's position that the Applicant should receive a proper examination of all the elected claims without further delay.

In summary, in view of the Examiner's present failure to establish an Election of Species Requirement and the Applicant's meeting of the Applicant's obligation to make an election, the Applicant respectfully requests that the Examiner refrain from issuing any further Election of Species Requirement and to immediately examine all the elelcted claims.

Conclusion

Accordingly, in view of all the reasons set forth above, the Examiner is respectfully requested to reconsider and withdraw the Restriction Requirement. Moreover, in view of all the reasons set forth above, the Examiner is respectfully requested to reconsider and withdraw the Election of Species Requirement. Also, an early indication of allowability is earnestly solicited.

Respectfully submitted,



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